

SECTION 313  
**PROJECT COOPERATION AGREEMENT**  
**(Partial Cost-Reimbursement)**

**BETWEEN**

**THE DEPARTMENT OF THE ARMY**

**AND**

<Name of Non-Federal Sponsor>

**FOR CONSTRUCTION OF THE**

<Name of Facility>

<Location of Facility>

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer of the <Name> District, Army Corps of Engineers, and <Name of Sponsor> (hereinafter the "Non-Federal Sponsor"), represented by its <Title of Representative>.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for water-related environmental infrastructure and resource protection and

development projects pursuant to Section 313 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended;

WHEREAS, the <Name of Facility> at <Location of Facility> has been identified as a project of the type authorized by Section 313 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for the construction of the <Name of Facility> at <Location of Facility> (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 313 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, pursuant to Section 345 of the Water Resources Development Act of 1996 (Public Law 104-303), the Secretary of the Army is authorized to provide the Federal share in the form of grants or reimbursements to the non-Federal Sponsor and permit the non-Federal Sponsor to receive credit towards its share for design and construction services and other in-kind work completed within 6 years prior to and subsequent to entering into this agreement;

WHEREAS, Section 313 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of <Name of Facility> at <Location of Facility>, as generally described in the Scope of Work attached hereto, dated \_\_\_\_\_, 19\_\_\_\_

B. The term "construction" shall mean **[DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN DETAIL SUFFICIENT TO AVOID ANY CONFUSION OVER WHAT IS OR IS NOT INCLUDED. ENSURE THAT SPECIFIC FEATURES ARE IDENTIFIED.]**

C. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to project construction. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: **[INCLUDE BRACKETED ITEMS IF PROJECT DESIGN WORK WAS NOT ACCOMPLISHED BY A PREVIOUS PCA]** <; preconstruction engineering and design costs incurred within 6 years prior to and subsequent to the effective date of this Agreement; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XVII.A. of this Agreement; costs of historic preservation investigation in accordance with Articles XX.A., XX.D., and XX.F of this Agreement;> costs of developing NEPA documentation; costs of additional environmental compliance and mitigation; costs of preparation of plans and specifications; additional engineering and design costs during construction; actual construction costs including those incurred within 6 years prior to and subsequent to the effective date of this Agreement; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article X of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, and relocations for which the Government affords credit toward the total project costs in accordance with Article VIII of this Agreement; and applicable costs of audit in accordance with Article XIV of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; any costs due to betterments; or any costs of dispute resolution under Article XI of this Agreement.

**[NOTE: SEE ER 1165-2-131 AND PROJECT MANAGEMENT GUIDANCE LETTERS 4, 10 AND 11 (REVISED) FOR DETAILS ON WHICH COSTS AND VALUES ARE INCLUDED IN THE TOTAL COSTS OF INITIAL CONSTRUCTION.]**

D. The term "project design work" shall mean any work associated with the design phase of <Describe the Project> Project, to include concept design, report writing, detailed design, preparation of plans and specifications, design analysis and quantity/cost estimates for the Project. The term includes obtaining all required local, state and Federal permits and completion of all

environmental, hazardous substances, and historical investigations.

E. The term "Federal proportionate share" shall mean the ratio of the Government's total cash contribution required at the time of reimbursement in accordance with Article V of this Agreement to total financial obligations for total project costs as projected by the Government.

F. The term "Non-Federal Sponsor's proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash or credit contribution required at the time of reimbursement in accordance with Article V of this Agreement to total financial obligations for total project costs as projected by the Government.

G. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

H. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (including any bridge thereof) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

I. The term "period of construction" is the time period from execution of this Agreement until completion of all Project construction work

J. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

K. The term "functional portion of the Project" shall mean a portion of the Project for which the Project Coordination Team determines is suitable for the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the project to be suitable, the Project Coordination Team must determine that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

L. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

M. The term "proper invoice" shall mean a request for payment by the Non-Federal Sponsor in which the Non-Federal Sponsor certifies that it has made payments in the amount

claimed to its contractors, suppliers or employees for performance of work in accordance with this Agreement and provides evidence of payment made by it as may be required by the Government.

N. The term “design and construction services” shall mean project design work and construction as defined herein.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

### A. THE NON-FEDERAL SPONSOR'S OBLIGATIONS

1. Using its funds and the funds to be reimbursed by the Government, the Non-Federal Sponsor shall expeditiously construct the Project.

2. As further specified in Article IV of this Agreement, the Non-Federal Sponsor shall contribute 25 percent of the total project costs.

3. The Non-Federal Sponsor shall prepare and furnish the Government, for review, a proposed Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an acceptable OMRR&R Manual shall not negate the Non-Federal Sponsor's responsibility to provide for the OMRR&R of the completed project, or any functional portion thereof, in accordance with Article XII of this Agreement.

4. As further specified in Article VII of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way required for the construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, and shall perform or ensure performance of all relocations that the Non-Federal Sponsor and the Government determine are necessary for the construction, operation, maintenance, repair, rehabilitation, and replacement of the Project.

5. The Government shall be afforded the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. In the event that the Non-Federal Sponsor proposes to do work with its own forces, the Government shall be afforded the opportunity to review and approve the plan of work and materials to be incorporated into the work. In addition, to the maximum extent practicable, the Government shall be afforded the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Non-Federal Sponsor shall provide such notification in writing at the

earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government made as a result of its non-technical review, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Non-Federal Sponsor personnel), shall be exclusively within the control of the Non-Federal Sponsor.

## B. OBLIGATIONS OF THE GOVERNMENT

1. Subject to the availability of funds and the limitations on reimbursement contained in Article VI of this Agreement, the Government shall reimburse the Non-Federal Sponsor for the Federal proportionate share of total project costs to the extent that such costs are reasonable, allowable, and allocable and are costs expended in connection with the construction provided in paragraph . A.1 of this Article. The total project costs are estimated at \$\_\_\_\_\_ and the Federal proportionate share shall not exceed seventy-five (75%) percent of this amount.

### **[OPTIONAL - TO BE ADDED IF DEEMED NEEDED BY THE GOVERNMENT OR THE NON-FEDERAL SPONSOR:]**

2. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$\_\_\_\_\_, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Non-Federal Sponsor, after consultation with the Government, may award a contract or contracts if the Non-Federal Sponsor has funds sufficient to pay the entire amount of the contract or contracts. However, such actions shall not obligate the Government to reimburse the Non-Federal Sponsor for its share of such costs.

3. The Government shall perform a final accounting in accordance with Article IV.C. of this Agreement to determine the credits and cash contributions provided by the Non-Federal Sponsor toward the total project costs in accordance with this Article and Articles IV, V, VI, VII, VIII, X, XVII and XX of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs A.1-4 of this Article.

4. The Government may perform periodic inspections to verify progress of construction, a final inspection to establish the beginning of operation and maintenance by the Non-Federal Sponsor, and may provide technical assistance to the Non-Federal Sponsor on an as-

needed basis until the Project construction is completed. Any costs incurred by the Government in furtherance of this paragraph shall be included in the total project costs.

### ARTICLE III - MANNER OF PERFORMING THE PROPOSED WORK

A. The Non-Federal Sponsor assumes full and exclusive responsibility for construction of the project.

B. In the event that the Non-Federal Sponsor elects to construct betterments during the period of construction, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to construct. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments, including costs associated with obtaining permits and shall pay all such costs directly to its contractor or contractors and without reimbursement by the Government.

C. The Non-Federal Sponsor shall procure all necessary permits and licenses; comply with all applicable laws, regulations, ordinances and other rules of the United States of America, of the state or political subdivisions thereof wherein the work is done, or of any other duly constituted public authority, including the laws and regulations specified in Article IX of this Agreement.

D. As further described in Article XVII of this Agreement, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that are determined to be required for construction of the Project. All costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included as part of the total project costs.

E. The Non-Federal Sponsor shall comply with and include provisions consistent with the following requirements in all construction contracts:

1. Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

2. Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto.

3. Clean Air Act, 42 U. S. C. Section 1857 (h).

4. Clean Water Act, 33 U. S. C. Section 1368.
5. Convict Labor, Executive Order 11755, dated December 29, 1973.
6. Drug-Free Workplace Act, 41 U. S. C. Section 701.
7. Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, dated February 11, 1994.
8. National Environmental Policy Act of 1969, 42 U. S. C. Section 1251 et seq.
9. National Historic Preservation Act, 16 U. S. C. Section 470 et seq.
10. Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103-353.

#### ARTICLE IV - COST SHARING

A. The Non-Federal Sponsor shall contribute 25 percent of the total project costs in accordance with the provisions of this paragraph. The Government shall contribute 75 percent of the total project costs, a portion of which shall be in the form of cost-reimbursement payments to the Non-Federal Sponsor.

B. The Non-Federal Sponsor may request the Government to provide lands, easements, and rights-of-way or perform relocations on behalf of the Non-Federal Sponsor during the period of construction. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article V.C. of this Agreement. Notwithstanding the provision of lands, easements, and rights-of-way or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response of hazardous substances in accordance with Article XVII.C. of this Agreement.

C. Upon completion of the Project's construction or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall perform a final accounting to determine the credits and cash contributions provided by the Non-Federal Sponsor toward the total project costs in accordance with paragraphs A. and B. of this Article and Articles



VI, VII, VIII, XVII, and XX of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under Article II.A.1-4.

D. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of the total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

## ARTICLE V - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs. By **[SPECIFIC DATE, BASED UPON THE TIMING OF THE NON-FEDERAL SPONSOR'S FISCAL CYCLE]** and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions or reimbursements to the Non-Federal Sponsor provided to date and the current projections of total project costs, of the components of total project costs, **[INCLUDE THE FOLLOWING PHRASE IN PCA'S THAT INCLUDE ARTICLE XXI:** of the maximum total project costs determined in accordance with Article XXI of this Agreement;], of each party's share of total project costs, of the Non-Federal Sponsor's proportionate share, of the Federal proportionate share and of the funds the Government projects it shall reimburse the Non-Federal Sponsor for the upcoming fiscal year or the funds required from the Non-Federal Sponsor for its cost-sharing for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$\_\_\_\_\_, the Non-Federal Sponsor's cash required to meet its total financial obligations for construction is projected to be \$\_\_\_\_\_, the amount of credits to be afforded the Non-Federal Sponsor is projected to be \$\_\_\_\_\_, and the Government's reimbursement under Article II.B.1. is projected to be \$\_\_\_\_\_. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the reimbursement required under Article II.B.1. of this Agreement in accordance with the provisions of this paragraph.

1. Prior to award of the first construction contract or commencement of the first significant in-house expenditures where the non-Federal sponsor elects to perform work with its own forces, the Government shall project the value of the Non-Federal Sponsor's contributions toward the total project costs under this Article and Articles VI, VII, VIII, X, XVII, and XX of this Agreement and the Government shall adjust its Federal proportionate share for purposes of reimbursement to a percentage necessary to make the Government's total contribution toward the total project costs equal to 75 percent of the total project costs.

2. Periodically, but not more frequently than once every thirty days, the Non-

Federal Sponsor shall provide the Government with a proper invoice describing the amounts of funds it has expended and for which it seeks reimbursement. The Government shall review and approve such invoices and, subject to availability of funds, and subject to the extent that costs described in such invoices are reasonable, allocable and allowable, shall provide reimbursement in the form of its proportionate share to the Non-Federal Sponsor as described in paragraph B.3 of this Article.

3. Reimbursement payments shall be made 14 days (the "due date") after receipt of the proper invoice by the designated billing office. An interest penalty shall be credited to the Non-Federal Sponsor's account automatically by the designated payment office, without request from the Non-Federal Sponsor, if payment is not made by the due date. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and shall be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period shall be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period.

C. In advance of the Government incurring any financial obligation associated with additional work under Article IV.B., of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional by delivering a check payable to "FAO, USAED, [**APPROPRIATE USACE DISTRICT OR DIVISION**]" to the District Engineer.

D. Upon completion of the project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof.

1. In the event the final accounting shows that the total reimbursement provided by the Government is less than its required share of total project costs, the Government shall, subject to the availability of funds, no later than 90 calendar days after completion of final accounting, make a cash payment to the Non-Federal Sponsor of whatever sum is required to meet the Government's required share of total project costs. In the event existing funds are not available to make the required cash payment, the Government shall seek such appropriations as are necessary to make the refund. Additionally, the Government shall be required to pay interest in the manner specified in paragraph B.3. of this Article, except that such interest shall not accrue until after the

90-day period has elapsed.

2. In the event the final accounting shows that the total contribution provided by the Government exceeds its required share of total project costs, the Non-Federal Sponsor shall refund the excess to the Government no later than 90 calendar days after written notice by the Government that the final accounting is complete. In the event existing funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such funds as are necessary to make the refund. In the event that such funds are not made available within a reasonable amount of time, the Government may off-set any amounts owed against any other projects with the same Non-Federal Sponsor under the Section 313 program and may use any other procedures permitted by law. The Non-Federal Sponsor shall be liable for interest under Article XVI.D of this Agreement to the extent that such refund shall take longer than ninety [90] calendar days after the final accounting is complete.

**[EXPLANATORY NOTE: IF DURING NEGOTIATION OF THE PCA THE NON-FEDERAL SPONSOR, IN A REQUEST PROCESSED THROUGH PROPER CHANNELS, CAN DEMONSTRATE TO THE SATISFACTION OF THE DISTRICT ENGINEER THAT A LONGER TIME PERIOD FOR PAYMENT OF THE ADDITIONAL REQUIRED FUNDS IS APPROPRIATE, THE PCA MAY STATE THE DIFFERENT TIME PERIOD.]**

#### ARTICLE VI - LIMITATIONS ON CREDITS AND REIMBURSEMENTS FOR PROJECT DESIGN AND CONSTRUCTION WORK

A. The Non-Federal Sponsor may receive credit, but not to exceed 25% of the total project costs, towards its share of the total project costs for design and construction services and other in-kind work performed by or for the Non-Federal Sponsor subsequent to or within 6 years after execution of this Agreement. In addition the Non-Federal Sponsor may receive credit for the value of work performed by a State or local agency on behalf of the Non-Federal Sponsor. Such credit shall be limited to the reasonable actual cost or value of design or construction services and other in kind work as determined by the District Engineer.

1. In the event that the previously completed project design work is modified or revised to reflect current environmental or regulatory standards, the costs of such revisions will be subtracted from the credit amount.

2. Where the Non-Federal Sponsor's cost for completed design work is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer and the credit shall be limited to the reasonable allowable and allocable cost of the completed design work as determined by the District Engineer.

B. In the event that the Non-Federal Sponsor received Federal funds to perform the project design work for which it seeks credit, or has received but not yet expended such funds for design or construction services or in-kind work, it may not receive such credit or use such funds for its share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute. The Non-Federal Sponsor may use grants from State or local agencies for the performance of any work for which it seeks credit.

C. Except as provided in this Article, reimbursement shall not be made for design or construction work completed prior to the execution of this Agreement.

D. Determinations of costs eligible for reimbursement shall be made in accordance with Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments" and shall be subject to audit in accordance with Article XIV of this Agreement to determine the reasonableness, allowability and allocability of such costs.

E. The amount of credit for which the Non-Federal Sponsor may be eligible under this Article shall not be subject to interest charges and shall not be adjusted to reflect changes in price levels between the time that the design work was completed and the time the credit is afforded.

## ARTICLE VII - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Non-Federal Sponsor and the Government shall determine the lands, easements, and rights-of-way required for construction, operation, maintenance, repair, rehabilitation and replacement of the Project, including those required for relocations, borrow materials and dredged or excavated material disposal. Prior to issuance of solicitation for each construction contract, the Non-Federal Sponsor shall acquire all such lands, easements, and rights-of-way necessary for that contract. Furthermore, for purposes of inspection, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Non-Federal Sponsor has provided.

B. The Non-Federal Sponsor and the Government shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, maintenance, repair, rehabilitation and replacement of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. Prior to the issuance of any solicitation for construction where the proper disposal of dredged or excavated material associated with the construction is anticipated, the Non-Federal Sponsor shall provide the Government with copies of all permits obtained for the disposal of dredged or excavated materials in accordance with Articles III.C and III.E of this Agreement and with plans and specifications of such improvements in detail sufficient for the

Government to review and comment in accordance with Article II.A.5 of this Agreement.

C. The Non-Federal Sponsor and the Government shall determine the relocations necessary for the construction, operation, maintenance, repair, replacement and rehabilitation, of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Non-Federal Sponsor shall be responsible for preparing or ensuring the preparation of plans and specifications for all relocations determined necessary.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

E. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided during the period of construction pursuant to paragraphs A. or B. of this Article. Upon receipt of such documents the Government, in accordance with this Agreement and in a timely manner, shall determine the value of such contribution, include such value in the total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of the total project costs.

#### ARTICLE VIII - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward, but not to exceed, its share of total project costs for the value of the lands, easements, and rights-of-way that the Government and the Non-Federal Sponsor jointly determine must be provided by the Non-Federal Sponsor pursuant to Article VII of this Agreement, and for the value of the relocations that the Government and the Non-Federal Sponsor jointly determine must be performed by the Non-Federal sponsor, or for which it must ensure performance, pursuant to Article VII of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, or relocations that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, or relocations to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value

of lands, easements, and rights-of-way, including those necessary for relocations and borrow materials, shall be the appraised fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be the appraised fair market value as determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. or paragraph B.5 of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value

shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not already approved by the Government in writing.

a. If the Government already has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article XIV.C of this Agreement to determine reasonableness, allowability, and allocability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and

mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article VII.C. of this Agreement.

5. Waiver of Appraisal. For lands, easements and rights-of-way acquired other than by eminent domain proceedings, an appraisal is not required for crediting purposes if the Government determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value of the real property interests is estimated at \$2,500.00 or less, based upon a review of available data, and the Government and the Non-Federal Sponsor stipulate the value of the real property interests.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the Commonwealth of Pennsylvania would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article XIV.C. of this Agreement to determine reasonableness, allowability, and allocability of costs.

## ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".



## ARTICLE X - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the construction or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the Project; and other related matters.

D. The Project Coordination Team may make recommendations that it deems warranted to the Non-Federal Sponsor on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations. Except as otherwise provided in this Agreement, the Non-Federal Sponsor may not reject or modify the Project Coordination Team's recommendations when the purpose of such recommendations is to ensure that the Project complies with Federal, State, or local laws or regulations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs, as defined in Article I.B. of this Agreement and cost shared in accordance with the provisions of this Agreement.

## ARTICLE XI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in

good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE XII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION AND REPLACEMENT (OMRR&R)

Upon completion of construction and final inspection by the Government as provided for by Article II.B.4. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's design, its Operation, Maintenance, Repair, Rehabilitation and Replacement Manual, and in accordance with applicable Federal and State laws as provided in Article IX of this Agreement.

## ARTICLE XIII - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, rehabilitation and replacement of the Project, and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE XIV - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence pertaining to construction in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books,

documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in the total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in the total projects costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE XV - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

## ARTICLE XVI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.A.1-4, III, V, VII, VIII, XII, XIV, XVII, or XX of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XVII of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article V.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XVII of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

## ARTICLE XVII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Government, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article VII of this Agreement, to be required for the construction, operation, maintenance, repair, rehabilitation, and replacement of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the Government provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in the total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article XIV.C. of this Agreement to determine reasonableness, allowability, and allocability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article II.A.4 of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Non-Federal Sponsor and the Government determine, pursuant to Article II.A.4 of this Agreement, to be required for the construction, operation, maintenance, repair, rehabilitation, and replacement of the Project. Should the Government and the Non-Federal Sponsor determine to initiate construction or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article X of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XVIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

**[FULL ADDRESS]**

If to the Government:

**[FULL ADDRESS]**

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XIX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XX - HISTORIC PRESERVATION

A. The Government shall be responsible for compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470 et seq.) for all lands required for the “undertaking”, as defined by Section 301 of the Act. Prior to initiation of construction, the Non-Federal Sponsor shall perform all necessary cultural resource studies, and the Government shall make all determinations and consultation in a manner consistent with 36 Code of Federal Regulations (CFR) Part 800, "Protection of Historic Properties," the Secretary of the Interior's Standards and Guidelines for Identification (48 Federal Register 44720-23), the National Park Service's publications, The Archaeological Survey: Methods and Uses (1978) and Identification of Historic Properties (1988), and the applicable guidelines of the State Historic Preservation Officer (SHPO). The Government shall ensure that the Non-Federal Sponsor's studies are conducted by qualified archaeologists, historians, architectural historians and/or historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards (48 Federal Register 44738-39). The Non-Federal Sponsor shall submit study plans

and reports to the Government for review and approval and shall be responsible for resolving any deficiencies. In the event that significant archeological or historical properties will be adversely affected, the Non-Federal Sponsor shall formulate a mitigation plan in consultation with the Government. The Non-Federal Sponsor shall be responsible for implementing the mitigation contained in a signed Memorandum of Agreement prior to the initiation of any construction activities affecting historic properties.

B. The Non-Federal Sponsor's responsibilities under this Article are limited to those historic properties within the undertaking's "area of potential effect", as defined by 36 CFR Part 800.2(c). Any "betterments" not affecting historic properties and constructed by the non-Federal Sponsor without Federal funds are not considered to be subject to the provisions of this Article.

C. The Non-Federal Sponsor shall include provisions in all construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the cessation of work in the immediate area of a discovered cultural resource until the situation is properly evaluated, the immediate verbal and written notification of the Non-Federal Sponsor and Government, and consultation between the Non-Federal Sponsor, the Government and the SHPO on appropriate measures to evaluate and treat the resource. Where the Non-Federal Sponsor elects to perform the construction work with its own forces, the same procedures shall be followed.

D. The costs of identification, survey and evaluation of historic properties shall be included in the total project costs and cost shared in accordance with the provisions of this Agreement.

E. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in the total project costs up to the statutory limit of one percent of the total amount the Government is authorized to expend for the Project.

F. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph E of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall be included in the total project costs.

## XXI - MAXIMUM PROJECT COST

The Congress has appropriated <provide amount> for the <name of project> project.  
**[NOTE: If Congress has not made a line item appropriation for the Section 313 Project, the first line should read: The amount of \$\_\_\_\_\_ has been allocated for <name of**

**project> project.]** The Government's present ability to participate in the <name of project> project is limited to this amount. This amount is less than the Federal share of the estimated cost of the <name of project> project, and the Government makes no commitment to budget for the balance of such funds. In the event that Congress does not provide appropriations, **[Alternative: In the event that additional funds are not allocated]** the Non-Federal Sponsor may terminate construction in a manner necessary to provide for the safety of the public and the integrity of the <name of project> project or it may elect to complete construction using its own funds. Such termination shall be accomplished within the amount of presently available funds, currently estimated to be <provide amount>. To provide for such an eventuality, 5% of available <name of project> project funds (75% Federal and 25% non-Federal) may be reserved as a contingency to pay the cost of termination. In the event Congress provides additional appropriations **[Alternative: In the event that additional funds are allocated]** for construction of the <name of project> project, the Government will resume reimbursement in accordance with Article II.B for construction of the <name of project> project using the subsequently appropriated **[allocated]** funds.

**[INCLUDE ARTICLE XXII ONLY IF THE NON-FEDERAL SPONSOR IS A STATE AGENCY OR DERIVES ITS FUNDS DIRECTLY FROM STATE LEGISLATIVE APPROPRIATIONS AND THE STATE IS LIMITED BY ITS CONSTITUTION OR BY STATE STATUTES FROM COMMITTING FUTURE STATE LEGISLATIVE APPROPRIATIONS.]**

#### ARTICLE XXII - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the Commonwealth of Pennsylvania.

**[USE THE FOLLOWING WHERE THE AMOUNT OF THE GOVERNMENT'S FINANCIAL PARTICIPATION IS ESTABLISHED AS A MATTER OF LAW, IN APPROPRIATIONS ACT LANGUAGE]**

#### ARTICLE XXIII - LIMITATION ON GOVERNMENT COSTS

The Government's financial participation in the Project is limited to \$\_\_\_\_\_. Notwithstanding any other provision of this Agreement, the non-Federal sponsor shall be responsible for all costs in excess of this amount nor shall the Government be liable for any interest charges resulting from an exhaustion of Federal funds.

**[USE THE FOLLOWING PROVISION WHERE THE GOVERNMENT'S FINANCIAL PARTICIPATION IS LIMITED TO A SPECIFIED AMOUNT BASED ON PROGRAM AND BUDGET GUIDANCE, WHERE THE NON-FEDERAL SPONSOR**



**VOLUNTARILY AGREES TO PAY ALL PROJECT COSTS OVER THIS AMOUNT]**

**ARTICLE XXIII - LIMITATION ON GOVERNMENT COSTS**

Federal funds for the Government's share of project costs have been allocated in the amount of \$\_\_\_\_\_. In accordance with the cost sharing percentages specified in this Agreement, this would allow the Government to reimburse 75% of a \$\_\_\_\_\_ total project cost, with a 25% contribution by the Non-Federal Sponsor of \$\_\_\_\_\_. Total project costs have been estimated to exceed \$\_\_\_\_\_. In the event that additional Federal funds are not made available for reimbursement for the Project, the Non-Federal Sponsor agrees to voluntarily contribute 100% of the total project costs exceeding \$\_\_\_\_\_ and such amounts shall not be subject to reimbursement by the Government. Notwithstanding any other provision of this Agreement, the Government shall not be liable for any interest charges resulting from an exhaustion of Federal funds.

**[USE THE FOLLOWING WHERE THE GOVERNMENT'S FINANCIAL PARTICIPATION IN THE PROJECT IS LIMITED EITHER BY APROPRIATIONS ACT LANGUAGE OR BY PROGRAM AND BUDGET GUIDANCE AND THE NON-FEDERAL SPONSOR DOES NOT AGREE TO CONTINUE CONSTRUCTION AT 100% NON-FEDERAL EXPENSE]**

**ARTICLE XXIII - LIMITATION ON GOVERNMENT COSTS**

As of the effective date of this Agreement, **[SELECT ONE OF THE FOLLOWING TWO PHRASES, AS APPROPRIATE]** [the Government has determined \$\_\_\_\_\_ is available for reimbursement to the Non-Federal Sponsor][Congress has appropriated \$\_\_\_\_\_ for reimbursement to the Non-Federal Sponsor]. This amount is less than the Federal share of the projected total project costs, and the Government makes no commitment to budget for the balance of the Federal share of total project costs. Notwithstanding any other provision of this Agreement, the Government's financial participation in the project is limited to this amount together with any additional funds that [the Government may allocate to this Project][the Congress may appropriate for the Project]. In the event that [the Government does not allocate additional amounts to this Project][Congress does not appropriate funds] sufficient to reimburse the Non-Federal Sponsor for the Federal share of total project costs, the Non-Federal Sponsor, within the funds available for the Project, shall terminate construction of the Project in a manner necessary to provide for the safety of the public and the integrity of completed work. Notwithstanding any other provision of this Agreement, the Government shall not be liable for any interest charges resulting from an exhaustion of Federal funds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
[TYPED NAME] [TYPED NAME]  
[TITLE IN FULL] [TITLE IN FULL]

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

## CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with the **[FULL NAME OF "PROJECT"]**, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
**[SIGNATURE]**  
**[TYPED NAME]**  
**[TITLE IN FULL]**

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**[SIGNATURE OF PCA SIGNATORY]**

**[TYPED NAME]**

**[TITLE IN FULL]**

DATE: \_\_\_\_\_